

REMARKS

The above-referenced patent application has been reviewed in light of the Office Action referenced above. Claims 45-51, 55-60, and 67-77 stand rejected under 35 USC § 103 over US Patent No. 5,629,732 of Moskowitz et al. (hereinafter Moskowitz) in view of US Patent No. 5,720,037 of Biliiris et al. (hereinafter Biliiris). In addition claims 45-51, 55-60, and 67-77 stand rejected under 35 USC § 112, first paragraph as failing to comply with the written description requirement. Claims 45-51, 55-58, 60, 62, and 67-77 are now pending in this application. Claims 45, 55, 67, 69, and 74 have been amended to clarify Assignee's claimed subject matter. These amendments do not, however, narrow the scope of claimed subject matter and as a result should not result in prosecution history estoppel. Claim 59 has been cancelled. However, this cancellation should not result in prosecution history estoppel because similar and/or the same limitations are present in other claims pending in the present application. Therefore, the cancellation of claim 59 is not a narrowing amendment and as such should not result in prosecution history estoppel. No new matter has been presented. Reconsideration of the above-referenced patent application in view of the foregoing amendments and following remarks is respectfully requested.

Assignee has also amended the specification to correct a priority claim to include related pending applications which were inadvertently omitted. As this amendment is not within the time frame specified by 37 CFR 1.78, this amendment is accompanied by a petition as required by 37 CFR 1.178(a)(3) stating that entire delay was unintentional along with the fee required by 37 CFR 1.17(t).

With regard to the Examiner's rejections under 35 USC § 112, first paragraph, Assignee respectfully asserts that the rejections are moot in view of the above amendments. However, Assignee respectfully asserts that these amendments should not result in prosecution history estoppel because, as amended, Assignee's claimed subject matter is broader than the objected to language. Moreover, Assignee does not agree with the Examiner's characterization of the rejected claim language as violating 35 USC § 112, first paragraph. Specifically, Assignee would like to direct the Examiner's

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attention to page 9, lines 19-23, of the present application. This passage clearly states that "Flow controllers 272 and 280 may be implemented as software provided within the server (240 or 260) and subscriber PC 110." See page 9, line 19-23. Additional support for the rejected language can be found throughout the specification such as Figs. 3, and 10-12, for example. As the specification clearly indicated that flow control could be implemented on the server, one of ordinary skill would have appreciated and understood that the later described flow control methods, flowcharts, apparatuses, and/or systems could likewise be implemented on the server. In light of the foregoing, Assignee respectfully asserts the rejection under 35 USC § 112, first paragraph, has been traversed. According, Assignee respectfully requests that this rejection be withdrawn by the Examiner.

Furthermore, with regards to the Examiner's rejection of the language "the remote computing device, as a result of receiving the seek request and after one other completion of the transmission of the first portion of the file, re-fills the at least one buffer with the second portion of the file or makes the at least one buffer available for reuse." Assignee respectfully asserts that the Examiner's rejection is moot in view of the foregoing amendment. In addition, Assignee respectfully asserts that the Examiner's rejection of this language and corresponding rationale for not considering this language was in error. Specifically, Assignee respectfully disagrees with the Examiner's statement "that the teaching based on 414, 416 of Fig. 4A requires the subscriber's PC to flush its local buffers and ignore message from server until new data comes. In accordance with this teaching, any additional data from the first portion of the file the server attempts to transmit after receiving a seek request would be void because the buffers at the client side are flushed." Assignee respectfully points out that this is a mischaracterization of the teachings of Assignee's application and that the Examiner failed to consider the cited portions of the disclosure within the context of the teaching of Assignee's entire disclosure. For example, page 14, line 31 – page 15, line 2, states that "Of course, it should be understood that the server 240 never interrupts transmission in the middle of an audio block, but rather interrupts transmission once the full block has been transmitted, in order to avoid protocol errors with the subscriber PC 110." It should, however, be noted that this is merely an example from Assignee's disclosure relating to a server and that claimed subject matter is not limited in this regard. Assignee

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would also like to note that this language is merely being pointed out to refute the Examiner's inappropriately narrow interpretation of Assignee's disclosure, and as such Assignee respectfully asserts that claimed subject matter is in no way limited to this example. In light of the foregoing, Assignee respectfully asserts that this ground for rejection has been traversed. Accordingly, Assignee respectfully requests that the Examiner withdraw this ground for rejection.

With regard to the Examiner's rejection under 35 USC § 103, Assignee respectfully traverses these rejections. Specifically neither Moskowitz nor Biliris, alone or in combination teach or suggest "transmitting with the remote computing device, the second portion of the file from the memory queue to the client electronic; wherein the remote computing device, as a result of receiving the seek request and after one other completion of the transmission of the first portion of the file, re-fills at least a portion of the memory queue with the second portion of the file", as recited in Assignee's claim 45. In light of this, Assignee respectfully asserts that the Examiner's grounds for rejection have been traversed.

For at least the reasons above, Assignee respectfully submits that claims 45-51, 55-58, 60, 62, and 67-77 are allowable and requests that the Examiner permit these claims to proceed to issuance. Although additional arguments are believed to exist for distinguishing the cited documents, the foregoing is believed sufficient to address the Examiner's rejections. Likewise, failure of the Assignee to respond to a position taken by the Examiner is not an indication of acceptance or acquiescence of the Examiner's position. Instead it is believed that the Examiner's positions are rendered moot by the foregoing and, therefore, it is believed not necessary to respond to every position taken by the Examiner with which Assignee does not agree.

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CONCLUSION

In view of the foregoing, it is respectfully submitted that all of the claims pending in this patent application are in condition for allowance. If the Examiner has any questions, he is invited to contact the undersigned at (503) 439-6500. Consideration of this patent application and early allowance of all the claims is respectfully requested.

Please charge any shortages and credit any overcharges of any fees required for this submission to Deposit Account number 50-3130.

Respectfully submitted,

Dated:

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